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A.D. C5147

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OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Wilford W. Johansen, Director, Region 21

DATE: JUN 28 1974

FROM : Gerald Brissman, Associate General Counsel
Division of Advice

SUBJECT: California Motor Express
Case No. 21-CC-1503, 1512

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This case was submitted for Advice because it involves novel questions under the "struck work-ally" doctrine. For the reasons discussed below, it was concluded that an 8(b)(4)(i)(ii) first part (B) complaint is warranted based upon Teamsters Local 595's picketing of the Los Angeles terminal of California Motor Express and Teamsters Local 542's inducement (including threats of fines) at its San Diego warehouse.

FACTS

The primary Employers are retail food stores who belong to a multi-employer bargaining association designated as the Food Employers' Council ("FEC"). The other employers involved in this proceeding are various producers, suppliers and brokers (herein "food processors") and California Motor Express ("CME"), a common carrier by truck. FEC Employers operate central warehouses and distribution centers. The chain store members of FEC have their own warehouses and the independent members share distribution facilities. In December 1973, the Teamsters, who represent warehousemen and drivers employed at the FEC warehouses, began a strike against the FEC in connection with collective bargaining over a new contract.

Prior to the strike, supplies were delivered to the stores of chain store and independent members of FEC by either of the following methods: (1) supplies were delivered from the food processors by common carrier (including CME) or the processors' own vehicles to FEC warehouses, where the supplies were checked in and sorted by unit warehouse employees, and delivered to retail stores by unit drivers who sometimes helped with the unloading; or (2) some loads were delivered directly from the food processors to individual stores by common carriers (including CME). 1/ Some independent stores, however, received nearly all of their deliveries by common carrier. The common carriers did not do any sorting work except on an emergency basis.

1/ Such direct deliveries were primarily for promotional sales.

During the strike, and because of the strike, the processors on their own initiative instructed CME to transport supplies normally delivered to central warehouses directly from the food processors to the individual stores. In some instances, the processors offered to FEC members special drop shipments, or so-called "strike pallets," consisting of a mixture of the suppliers' products. The processors ordinarily charged the stores an extra fee for the delivery of "strike pallets," although occasionally the additional expense was absorbed by the processors themselves. As a result of the new arrangement with the processors, CME sorted at its terminals large shipments for delivery to the stores. The Region found that the change in delivery procedures necessarily involved some cooperation between the processors and the struck Employers (FEC) in that the latter had to accept drop shipments and would advise the processors as to volume and types of goods to be shipped to each store. There was no evidence, however, that FEC participated in the arrangement between the food processors and CME, although CME did know of the strike and the changes in delivery methods and did transport some "strike pallets."

On December 18, 1973, Teamsters Local 495 picketed CME's Los Angeles terminal with signs saying "CME Unfair." CME was at that time making deliveries directly from its Los Angeles terminal to the primary Employer's retail stores and doing sorting work. The picketing ceased when CME agreed to stop making deliveries directly from the food processors to the stores.

On December 13, 1973, Teamsters Local 542 instructed CME's San Diego terminal employees not to handle supplies destined to the stores or warehouses of the struck Employers, threatened employees with fines if they handled such goods, and threatened CME with picketing if CME trucks crossed picket lines at the stores or warehouses. Except for one shipment to an independent member of FEC, all food shipments from CME's San Diego terminal were to FEC employer Safeway. CME also delivered to non-food industry customers from its San Diego terminal.

ACTION

It was concluded that authorization of an 8(b)(4)(i)(ii)(B) complaint is warranted based upon Local 595's picketing at CME's Los Angeles terminal and Local 542's coercive conduct at CME's San Diego terminal.

In the circumstances of this case, as set forth below, it was concluded that the "struck work-ally" doctrine was inapplicable to the operations of CME. Thus, such sorting and direct store deliveries as CME performed during the strike could not be considered a new kind of work

acquired as a result of the strike, since CME had performed both types of work, at least on a limited basis, before the strike. And to the extent that CME performed an increased amount of direct delivery and sorting work during the strike, this resulted from an arrangement conceived of and initiated by the Food Processors, and in which the primary Employers did not participate. 2/ It was further noted that CME, as a common carrier, was under an obligation to accept all orders for shipment. 3/ In these circumstances, application of the "struck work-ally" doctrine to the facts of this case would appear to be incompatible with the purpose of Section 8(b)(4)(B) in protecting neutral employers and their employees from involvement in a union's primary dispute. 4/

Furthermore, even assuming arguendo that the increased amounts of direct delivery and sorting performed by CME during the strike is to be regarded as struck work, it would be argued that the Union's conduct directed against CME was nevertheless unprivileged to the extent that it was intended to affect that portion of CME's operations which did not involve the performance of any struck work. Thus, Local 542's threat

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2/ In this regard, see P.M.Picton, 131 NLRB 693; Patton Warehouse, 140 NLRB 1474, 1483 and Thomas Byrne, Inc., 180 NLRB 502. This is not to say, however, that the Food Processors acted without the cooperation of FEC members.

3/ Cf. Truck Operators League of Oregon, 122 NLRB 25.

4/ See Thomas Byrne, Inc., supra. The instant case was deemed distinguishable from N.L.R.B. v. Business Machines (Royal Typewriter), 228 F.2d 553 (C.A. 2, 1955) and Truck Operators League of Oregon, supra, where 8(b)(4)(B) complaints were dismissed under the "struck work-ally" doctrine. Thus in Royal Typewriter, although the commercial customers of the struck employer arranged with independent repair firms to perform the struck work, this was done at the suggestion of the primary employer who directly reimbursed those firms. And in Truck Operators League of Oregon, the common carrier made arrangements directly with the primary employer to perform the struck work. Moreover, while contrary to the Charging Party's contention, the Food Processors in the instant case would be deemed to be allies of the primary Employers since the latter's cooperation was required in diverting shipments; and while the arrangement with CME was conceived and initiated by an ally, i.e., the Food Processors, these facts were not viewed as making the Processors' directions to CME the factual or legal equivalent of an arrangement between FEC and CME. Cf. Truck Operators League of Oregon. (Continued)

to picket CME would be unlawful since the threatened conduct would not be limited, either as to time or place, to CME's performance of struck work, but rather would be directed at interfering with CME's entire operation as a common carrier at the locations involved. 5/ CME was thus viewed as a "limited ally" based upon the combination of two factors; (1) the fact that CME is a licensed common carrier and as such under a legal obligation to accept all orders for shipment 6/; and (2) the fact that the performance of struck work by the common carrier did not come about as a result of an arrangement with the primary employers but rather at the instance of the Food Processors, albeit, the allies of the primary Employers.

4/ (Cont'd)

Nor would there be any merit to the contention that Local 542's threats to fine CME's employee-members who handled goods destined for shipment to the primary Employer's stores and warehouses were privileged under Interborough News Co., 90 NLRB 2135. In Interborough News, the Board held that a union engaged in a primary dispute may, without violating the prohibitions against secondary boycotts, induce the employees of neutral secondary employers to refrain from making regular deliveries to the primary employer's place of business so long as "such inducement invite/s/ action only at the premises of the primary employer" (emphasis by the Board). The instant situation is distinguishable in that the Union's inducement of CME's employees was not limited to inducing action only at the premises of FEC. Thus, Local 542's threats to fine employee-members of CME if they handled goods destined for FEC were broad enough to inhibit these employees not only from making deliveries to the primary Employers, but from loading, unloading, sorting, breaking down or otherwise "handling" the goods, thereby inviting action not only at the primary situs but at CME's place of business as well.

5/ Under this view of the case, Local 595's picketing of CME's Los Angeles terminal would be deemed privileged, since it occurred exclusively at a place and at times when terminal employees were performing struck work, and ceased as soon as this work was ended. And similarly Local 542's threatened fines of CME's employees at the San Diego warehouse would be deemed privileged since this conduct was intended to inhibit the performance of struck work only.

6/ Cf. Truck Operators League of Oregon, supra.

In this regard, it was noted that in Truck Operators League of Oregon the Board held that the Union's ambulatory picketing of the common carriers, who had been found to be allies of the primary employer, was privileged only "to the extent that they were acting as 'allies.'" In thus finding the Union's conduct privileged, the Board stressed the fact that the Respondent's picketing had been limited, both with respect to time and place, to that portion of the common carriers' operation which involved the performance of struck work. 7/ Accordingly, the instant situation was viewed as distinguishable, in that Local 542's conduct was directed at CME's entire operation without regard to whether the pressured operation was engaged in the performance of any struck work. Therefore, under this view of the case, the Union's coercive conduct would be deemed privileged where it is limited both with respect to time and locations to those portions of CME's business operations which involve the performance of struck work; but any coercive conduct not so limited, such as Local 542's threatened picketing of CME generally, would be viewed as unprivileged and a violation of Section 8(b)(4)(B).

G. B.

7/ Likewise, in Irish Welding Supply Corp., 204 NLRB No. 84, the Board adopted without comment the ALJ's finding that the Respondent's picketing of a secondary employer, who was performing "struck work," was privileged only to the extent that such picketing was limited to times and locations at which "struck work" was actually being performed. Thus, the inference is warranted that had the Respondent picketed at any other time or location, i.e., where the secondary employer was engaged in his regular business operations and not performing struck work, such conduct would not have been privileged.